

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 3340**, from R-1 Residential to B-1 Local Business, requested by Mark Hunzeker on behalf of U.S. Bank, on property generally located at South 27th Street and Woods Boulevard.

STAFF RECOMMENDATION: Approval of a reduced area, i.e. the north 8' of the south 38' of the east 70' of Lot 38.

ASSOCIATED REQUESTS: Change of Zone No. 3347 (02-3) and Special Permit No. 1237A (02R-2)

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission

Public Hearing: 10/03/01

Administrative Action: 10/03/01, 10/17/01 and 10/31/01

RECOMMENDATION: **Denial** (6-2: Newman, Bills, Taylor, Steward, Carlson and Schwinn voting 'yes'; Duvall and Krieser voting 'no'; Hunter absent).

FINDINGS OF FACT:

1. The staff recommendation to approve this change of zone ***for a reduced area*** is based upon the "Analysis" as set forth on p.3-5, concluding that the change of zone should not extend closer than 30 feet from South 27th Street and Woods Blvd. This will maintain the integrity of the 30 ft. front yard along South 27th Street and Woods Blvd. while allowing a sign visible from South 27th Street.
2. The public hearing before the Planning Commission was held on October 3, 2001. The applicant's testimony is found on p.6-7 and p.8.
3. Testimony in opposition is found on p.7, and the record consists of two letters in opposition, including the Country Club Neighborhood Association (p.020-023). The opposition is against the incremental transformation from residential to commercial.
4. The applicant's response to the opposition is found on p.8, suggesting that the applicant would accept a condition that they would remove the pole sign and that there would never be a pole sign in the future.
5. On October 3, 2001, a motion to deny failed 4-3 (Newman, Taylor, Carlson and Hunter voting 'yes'; Duvall, Steward and Schwinn voting 'no'; Bills and Krieser absent); and a motion to approve an area that allows a 15' setback, conditioned upon an agreement that only the sign as shown and proposed during the public hearing shall be allowed, and that no other sign at any location on the property shall be allowed, failed 3-4 (Duvall, Steward and Schwinn voting 'yes'; Newman, Taylor, Carlson and Hunter voting 'no'; Bills and Krieser absent). See Minutes, p.8-10.
6. On October 17, 2001, a motion to deny failed 4-3 (Carlson, Hunter, Taylor and Newman voting 'yes'; Duvall, Bills and Schwinn voting 'no'; Krieser and Steward absent); and a motion to approve the staff recommendation of a reduced area failed 3-4 (Duvall, Bills and Schwinn voting 'yes'; Carlson, Hunter, Taylor and Newman voting 'no'; Krieser and Steward absent). See Minutes, p.10.
7. On October 31, 2001, the Commission entered into a discussion with the staff regarding contract zoning (p.11). A motion to approve the staff recommendation of a reduced area failed 2-6 (Duvall and Krieser voting 'yes'; Newman, Bills, Taylor, Steward, Carlson and Schwinn voting 'no'; Hunter absent). See Minutes, p.11-13.
8. On October 31, 2001, the Planning Commission disagreed with the staff recommendation and voted 6-2 to recommend **denial** of this change of zone request (Newman, Bills, Taylor, Steward, Carlson and Schwinn voting 'yes'; Duvall and Krieser voting 'no'; Hunter absent). See Minutes, p.13.
9. At the request of the applicant, this change of zone was not forwarded to the City Council until an alternative proposal for a text amendment and special permit had been heard and acted upon by the Planning Commission. That Change of Zone No. 3347 and Special Permit No. 1237A were acted upon by the Planning Commission on December 12, 2001. The applicant has requested that all three applications be scheduled on the same City Council agenda.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: _____

REFERENCE NUMBER: FS\CC\2002\FSCZ3340

DATE: December 31, 2001

DATE: December 31, 2001

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone 3340

DATE: September 17, 2001

PROPOSAL: Rezone approximately 10' x 97' of land from R-1 Residential to B-1 Local Business at South 27th Street and Woods Boulevard

LAND AREA: Approximately 970 square feet.

CONCLUSION: The change of zone should not extend closer than 30 feet from South 27th Street and Woods Blvd. This will maintain the integrity of the 30 foot front yard along South 27th Street and Woods Blvd while allowing a sign visible from S. 27th Street.

<u>RECOMMENDATION:</u> Approval to reduced areas. Alternate area is North 8' of the south 38 feet of the east 70 feet of Lot 39
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GENERAL INFORMATION:

LEGAL DESCRIPTION: North 10 feet of the south 38 feet of the east 97 feet of Lot 38, Block 1, Bishop Heights, Lancaster County, Nebraska, located in the SW 1/4 of Section 6, T9N, R7E, Lancaster County, Nebraska.

LOCATION: South 27th Street and Woods Boulevard.

APPLICANT: U.S. Bank

OWNER: U. S. Bank

CONTACT: Mark Hunzeker
1045 Lincoln Mall #1200
Lincoln, NE 68508

EXISTING ZONING: R-1 Residential

EXISTING LAND USE: Parking lot and landscaping.

SURROUNDING LAND USE AND ZONING:

North:	R-1 Residential	Parking lot and open space
South:	R-1 Residential	Open space, commercial south of Woods Blvd.
East:	B-1 Local Business	Commercial
West:	R-1 Residential	Single family residential

HISTORY:

Prior to 1979 the zoning was A-1, Single Family Dwelling District and G, Local Business District.

In 1979 zoning was changed to R-1, Residential and B-1, Local Business.

Change of Zone 2227 from R-1 to B-1 was approved by City Council in March 1986. This change of zone was to allow the expansion of bank offices.

On August 31, 1987 City Council approved Special Permit #1237 to allow construction of a parking lot for 17 parking stalls. The area of the special permit extends to S. 27th Street. A landscape plan in excess of minimum design standards to screen the parking lot from 27th Street was required.

Related with Special Permit #1237 was Change of Zone #2346. This change of zone was from R-1 to B-1 to allow the installation of an automatic teller machine. City Council approved the change of zone on August 24, 1987.

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan reflects the existing zoning and designates the proposed B-1 zoning as Urban Residential.

The Comprehensive Plan identifies goals for Neighborhood Centers. One goal is to “maintain and encourage retail establishments and businesses that are convenient to, and serve, neighborhood residents, yet are compatible with but not intrusive upon residential neighborhoods.”

UTILITIES: Available

TRAFFIC ANALYSIS: S. 27th Street is a Principle Arterial.

ANALYSIS:

1. This change of zone is to allow a commercial sign between the parking lot and S. 27th Street. Commercial signs are not allowed in the R-1 district.

2. **27.69.045 Permitted Signs: B-1 Zoning District.**

In the B-1 zoning district, the specific regulations are as follows:

(a) On-premises wall signs are permitted. The sign area of such wall signs per building facade shall not exceed thirty percent coverage of the wall face or a total of 400 square feet, whichever is lesser. Any marquee sign shall not exceed three feet in height or the height or vertical thickness of the marquee, whichever is greater. One pedestrian marquee sign per entrance not exceeding one foot in height, six square feet in area is permitted.

(b) One on-premises pole sign or one on-premises ground sign per business per frontage is permitted. Such signs shall be spaced a minimum of fifty feet apart

along any street frontage. In those instances where only a single business is conducted on the premises and the premises has a frontage along any one street of 150 feet or more, the business may have a maximum of two ground or pole signs as otherwise permitted in this section on any such frontage with a minimum spacing of 100 feet. If such sign is located in a required front yard, it shall not exceed fifty square feet of area, and a pole sign shall have a maximum height of twenty-five feet, and a ground sign shall have a maximum height of eight feet. If such sign is located outside the required front yard, it may have a maximum area of 100 square feet and a maximum height of thirty feet. If such sign is a combination of the two permitted signs of over 150 feet frontage, it may be increased to 150 square feet in area and thirty-five feet in height; provided it is fifty feet from other premises.

(c) In lieu of the sign permitted in paragraph (b) above, one on-premises projecting sign is permitted. Said projecting sign may project from a building a maximum of six feet six inches and may project into a required front yard, but it shall not project above the roof line or top of a cornice wall. Such sign shall have a minimum ground clearance of eight feet above the walk or grade below and may project over the public right-of-way when the building is erected adjacent to the front property line. The maximum area of such sign shall be 100 square feet.

(d) Where more than one business is located on the lot, the on-premises signs permitted in the required front yard pursuant to (b) above may be combined. If the combined sign is located in a required front yard, it shall not exceed fifty square feet in area. If the combined sign is a pole sign, it shall have a maximum height of twenty-five feet, and if the combined sign is a ground sign, it shall have a maximum height of eight feet. If the combined sign is located outside the required front yard, it may have a maximum area of 150 square feet. If the combined sign is a pole sign, it shall be spaced a minimum of seventy-five feet from any other premise.

(e) Within seventy-five feet of any residential zoning district, no sign shall face directly toward such district, except where the adjacent lot is used primarily for a nonresidential use. One sign, designating an accessory entrance, not exceeding twenty square feet of area and non-illuminated and non-reflecting, is permitted.

(f) Off-premises signs not exceeding 300 square feet in area and thirty-five feet in height are permitted, subject to the provisions of Section 27.69.035.

(g) In lieu of the signs in subsection (b):

One fifty square foot on-premises ground sign per entrance to a shopping center identifying the shopping center or commercial area; or One pole sign per frontage, 100 square feet in area, identifying the shopping center or commercial area. If the shopping center has more than 150 feet of frontage on any one street, the pole sign may be 150 square feet in area. Such pole signs shall be spaced a minimum of seventy-five feet from any other premises. (Ord. 17585 § 4; January 10, 2000: prior Ord. 16823 §1; July 10, 1995: Ord. 16735 §7; February 13, 1995: Ord. 16180 §1; August 3, 1992: Ord. 16012 §1; November 18, 1991: Ord. 14725 §3; August 3, 1987: Ord. 14613, as amended by Ord. 14677 §1; June 1, 1987: Ord. 12751 §25;

November 5, 1979: Ord. 12679 §11; September 4, 1979: Ord. 12571 §366 (part); May 8, 1979).

3. The city has no guarantee that the specific sign proposed by the applicant will be installed.
4. When Special Permit #1237 was approved for a parking lot for U.S. Bank, a landscape plan in excess of minimum design standards was required. The intent of this requirement should remain. The approved landscape plan shows a 47 foot landscape buffer between South 27th Street and the parking lot.
5. The R-1 district requires a 30 foot front yard. The intent of having the R-1 district along S. 27th Street was to insure a "green space" front yard in zoning districts that did not have use permits.
6. A possibly similar request, a change of zone from R-2 to B-1 at 40th Street north of South Street was approved in July 1998. That request was to rezone approximately 83' x 100' to allow a ground sign between the parking lot and the street in the front yard setback.
7. An existing pole sign for this business is located along Woods Blvd.

Prepared by:

Tom Cajka
Planner

CHANGE OF ZONE NO. 3340

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Staff recommendation: Approval of a reduced area.

Tom Cajka of Planning staff submitted two letters in opposition from the Country Club Neighborhood Association and Linda Wibbels.

Proponents

1. Mark Hunzeker appeared on behalf of **U.S. Bank**, the applicant. The facility at 27th & Woods Blvd. was built a long time ago in an area where a substantially new housing area was developing to the north. The bank site actually includes an entire row of lots which are residential that run along 27th Street to the corner of 27th & Kucera Drive and include the corner lot at 27th & Kucera. Hunzeker explained the reason for this change of zone request. At the time the facility was built for State Federal Savings, the zoning was left R-1 at the east edge of that row of residential lots. The landscaping has matured over the past 30 years to the point where this facility has become virtually invisible. There is a pole sign in front of the building, but you can't see it until you are virtually underneath it. The reason the applicant wishes to proceed with this project is to provide at least minimal identification for this facility.

The applicant has met with staff twice. The last time Hunzeker met with Mike DeKalb, this was the proposed solution, it being the minimum that would permit the bank to do what they need to do and to also be consistent with what has been done in at least one other place in the city. The other example is at Plaza Mall South at 40th & South Street. A strip was rezoned in front that went out to 40th in order to provide an identification sign for Plaza Mall South.

Hunzeker showed photographs of the proposed sign on this site. This sign would be taken out of the downtown bank lobby and mounted permanently at this location. Even at this location, it will be difficult to read from the south. And from the north it is not particularly great because there are several large trees in the right-of-way. Hunzeker submitted that this does not create a perfect solution to the identification problem but without removing a substantial amount of mature landscaping, this is the best they could come up with.

The staff is suggesting that the sign be located 30' back from the property line. But this buries it behind the mailbox and trees on the corner. It would be very difficult to see from the south and it would require removing a tree.

Hunzeker stated that the intent of this request is that the bank will remove the pole sign on the site when this sign is in place. Hunzeker also offered that if it makes the decision easier, the applicant would agree to consider placement of the sign 15' back from the front property line, which splits the difference

with the staff. Hunzeker suggested that there are other alternatives that are not very attractive, but the applicant is trying to be sensitive to the neighborhood and yet get some identification of this site.

Hunzeker observed that the staff recommendation is to stop the rezoning 30' east of 27th Street. He believes that the applicant could probably live with 15' but if it goes any further than 15', the applicant will have to come up with something else. Hunzeker would not be opposed to a condition being placed on this rezoning that requires removal of the pole sign and that there be no pole sign on this portion of the site. This applicant is not interested in putting a pole sign on this small strip nor interested in keeping the existing pole sign.

Steward inquired whether the applicant would be willing to accept the condition that there could be no future pole sign. Hunzeker believes that would be acceptable. Steward's concern is that the applicant or some other property owner could take this sign down and put up a pole sign. Hunzeker is certain he is authorized to agree that there would be no pole sign placed on this newly rezoned portion. They have not specifically discussed never ever putting a pole sign on the rest of the site but he does not believe the bank would object to that as a condition.

Carlson inquired whether the mature trees will be removed if this rezoning is denied. Hunzeker stated that they would not. The applicant has searched for the best way to put some identification on this site without doing any modification of the landscape. They do not want to do that. From a corporate identification perspective, this site is a real problem—it is virtually invisible and there needs to be some identification. They have chosen to seek the least intrusive in terms of any major change on the site.

Opposition

1. Phillip Kaye, 22 Bishop Square, President of Bishop Square, testified in opposition. Bishop Square is opposed to incremental transformation from residential to commercial. Bishop Square is particularly concerned because almost all of the land of the bank which faces 27th Street is opposite Bishop Square so they are our neighbor. In 1987, the bank added 17 parking stalls to an area that was residential. That was increment number one. This probably was a reasonable thing to do; however, going further and starting to further commercialize seems to be inappropriate. The concern of the Planning Commission should be for the people in the neighborhood who have made considerable investments in their property. Bishop Square has approximately 50 units and their goal is to have a beautiful garden area that is set in a residential area. If this were to pass, the movement is away from the residential and directed toward commercial.

Kaye noted that there is another banking institution across the street from US Bank. If the city begins to increase the commercial satisfactions involved for US Bank, is there any reason to assume that the city would not want to do the same for the bank directly to the south? This applicant knew what the outside architecture was when they bought the bank. Let them live with that which they selected and not change incrementally the whole residential character of a neighborhood.

Staff questions

Steward's problem with this is the process of spot zoning. Steward asked staff to describe any other means for accomplishing this without the process being proposed. Tom Cajka of Planning staff stated that the R-1 zoning does not allow the sign that the applicant is requesting. To have a sign for a commercial enterprise requires the B-1 zoning because it allows signs. Staff's analysis is that the staff recommendation is the only alternative to allow the sign that they desire. The signs in the B-1 district would allow either a pole sign or a ground sign, and that would be allowed in the front yard setback.

Steward is also concerned that the B-1 zoning creates greater permission than what is being requested in this specific proposal. Can we place a conditional use upon the rezoning? Rick Peo of the City Law Department stated that the Law Department is not in favor of contract zoning. In order to have a contract zone, it requires an agreement between the developer and the city separate from the change of zone. The case law that allows contract zoning also provides the city with a remedy if there is not an agreement. If the applicant asked for the use and then does not go forward, the city would have the right to rezone the property to its former zoning and stop the issuance of building permits. Peo believes the city has adequate remedy even without going through contract zoning to be sure that what is being proposed is what is done.

Steward's concern is the type of sign. If they were requesting just a blanket of B-1 approval with no direct stipulation as to the kind of sign, then we could end up with a pole sign. Peo believes the applicant has stipulated that they want the B-1 zoning in order to put in a ground sign. If the zoning is approved on that basis, and the applicant came forward with a sign permit for a pole sign, Peo believes the city would have a right to say no and introduce an ordinance to rezone to property back to R-1.

Response by the Applicant

Hunzeker suggested that if an agreement is required, the applicant is willing to do so; however, he does not believe an agreement is necessary in order to enforce the intent. This does not impose nor cause any harm to the Bishop Square area. The townhomes all face inward from 27th and are fenced and landscaped heavily from 27th Street.

Hunzeker pointed out that the B-1 district permits a lot of signage. He believes it would be a travesty to put a wall sign on that building that covers 35% of the area. The applicant tried to work with staff to come up with the best solution.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 3, 2001

Hunter moved to deny, seconded by Newman.

Hunter believes that allowing this application allows business to encroach into residential neighborhoods, and it opens up a floodgate for future potential signage in areas that are not meant to have that type of signage. Banks are in transitional areas around residential; however, she does not

find the loss of one tree to be a huge loss in terms of not creating a future encroachment in residential areas. If they need to redo their landscaping so that their signs are visible, that is a small price to pay. Because a mistake has been made in the past in allowing this to happen does not mean it needs to be perpetuated in the future.

Newman agreed with the testimony in opposition.

Steward does not think this is an encroachment. He thinks it is an improvement. If we are taking down a pole sign and putting up a visually less obtrusive sign in a respectful location, it seems to be an opportunity to work with the business that is concerned about residential transition. We don't have good means for making these transitions between zones of use. Once again, we have an awkward situation where there needs to be some special provision. He strongly believes that the removal of a large sign versus a small one is an improvement.

Duvall stated that he will vote against the denial. He believes this is an improvement. He believes the issues are benign and they don't have to cut down a tree.

Carlson will support the motion to deny because he is troubled by this "sliver" zoning. It is less for him whether the ground sign is better than the pole sign. It's just that the way this is being accomplished is a bad mechanism. He believes it is a poor use of the zoning code.

Hunter also observed that regardless that this is US Bank and a quiet use, there are many commercial uses that would like to have bigger or more visible signage on main streets and avenues. Everybody would like to have more visibility as main corridors develop, but it is not a reason to allow commercial signage to encroach upon R-1 zoned areas.

Motion to deny failed 4-3: Newman, Taylor, Carlson and Hunter voting 'yes'; Duvall, Steward and Schwinn voting 'no'; Bills and Krieser absent.

Steward moved approval of an area that allows a 15' setback, conditioned upon an agreement between the city and the property owner which states that only the sign as shown and proposed during this public hearing shall be allowed, and that no other sign at any location on the property shall be allowed, seconded by Duvall.

Steward does not like the use of a spot zone condition to solve a particular problem; however, in his opinion it seems like this results in a more aesthetic circumstance as well as accomplishing what the owner wants to accomplish. This would be an agreement for this case and this case only.

Carlson reiterated his opinion that it is less the sign than what we're doing with this "sliver" type of zoning. We don't want to establish a precedent. He thinks there will be more "sliver" zoning coming forward if this is approved. He does not believe that is why the zoning code exists.

Schwinn believes this is a very unique situation because it seems to him that those that went before us decided to use the R-1 zoning on So. 27th to serve as a setback buffer for an existing shopping

center. We can call it residential, but this is really the northwest corner of a shopping center which is backed up on the east side by a rather large apartment complex. He believes Steward's proposal is a good solution. He prefers the ground signs.

Hunter commented that the Commission seems to continually try to call something by something different than what it is. She agrees with the opposition. This location was designed and set and it has been there through several owners. Why would we make this exception? The underlying factor is rental versus ownership. There are plenty of people with a side yard off of which they would like to get extra rent. Hunter does not believe this is a situation that should be created. She believes there are ways to solve the problem on the property.

Motion to approve, with the condition for an agreement, failed 3-4: Duvall, Steward and Schwinn voting 'yes'; Newman, Taylor, Carlson and Hunter voting 'no'; Bills and Krieser absent.

This application is held over for administrative action on October 17, 2001. Public hearing is closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 17, 2001

Members present: Carlson, Hunter, Taylor, Duvall, Newman, Bills and Schwinn; Krieser and Steward absent.

Schwinn requested permission of the Commission to ask a question of the applicant. Rick Peo of Law Department agreed that the applicant could be asked a follow-up question, but no additional testimony can be introduced since the public hearing has been closed.

Mark Hunzeker, the applicant's representative, approached the Commission. Schwinn asked whether the applicant would rather have this application moved forward if the recommendation is denial or have is held over at the Planning Commission level if there is not a majority vote. Hunzeker stated that he would prefer a majority vote.

Newman moved denial, seconded by Carlson and failed 4-3: Carlson, Hunter, Taylor and Newman voting 'yes'; Duvall, Bills and Schwinn voting 'no'; Krieser and Steward absent.

Duvall moved approval of change of zone as requested by the applicant. Motion failed for lack of a second.

Duvall moved approval of the staff recommendation, seconded by Bills and failed 3-4: Duvall, Bills and Schwinn voting 'yes'; Carlson, Hunter, Taylor and Newman voting 'no'; Krieser and Steward absent.

This application is held over for administrative action on October 31, 2001. Public hearing is closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 31, 2001

Members present: Newman, Duvall, Bills, Taylor, Steward, Carlson, Krieser and Schwinn; Hunter absent.

Carlson requested to ask questions of the Law Department. He continues to read the zoning code noting that this application would approve B-1 zoning and thus all uses allowed in the B-1 zoning district. Rick Peo of the City Law Department concurred. Carlson has heard past discussion on this Commission that some may favor this application because of the limited circumstances, the limited signage and the particular sign proposed. But there is no grounds for that limitation in the zoning ordinance and no enforcement ability to make that happen. Peo advised that for zoning purposes, "a change of zone is a change of zone". The size of the parcel probably affects what uses can be put on it. But outside of those types of limitations, "anything goes" as permitted by right in the district. The Planning Commission has limited authority. The Commission is acting upon a change of zone and nothing else.

In terms of precedence, Steward believes there is precedence for contracting with the property owner within a zone for certain circumstances that are pertinent only to that purpose. Peo agreed that contract zoning has been approved by the Supreme Court. In a sense, we have contract zoning within the Planned Unit Development (PUD) process and Community Unit Plan (CUP) process in the use permit districts and we sometimes require development agreements. Those are utilized because there is a standard procedure to follow as to the guidelines and conditions that can be imposed. Those development agreements provide a tracking mechanism for people to enforce the contractual relationship that has been agreed upon as part of the permit process and the agreement is recorded in the Register of Deeds. If we just have a covenant filed with the land or some contract exists, the Building & Safety Department might not be aware of that situation when a person comes to get a building permit. Therefore, the city has discouraged contract zoning because it is an enforcement problem and there is no standardized criteria as to the limitations and the process of how it is going to be handled. Peo believes that contract zoning per se defeats the purpose of zoning districts.

Bills noted that the property along side of the bank is currently zoned R-1. What prohibits them from selling that off and developing it into residences? Peo believes it looks like it was intended to be a buffer zone and there is probably not much practical ability for it to be used for residences. Bills also noted the shopping center to the south, the U-Stop and Woods Bros. Realty, so there is quite a bit of B-1 zoning in this location.

Motion #1. Duvall moved approval of the staff recommendation, which approves a change of zone to B-1 for the north 8' of the south 38' of the east 70' of Lot 39, seconded by Schwinn.

Bills asked for clarification of the motion made by Steward at a previous meeting. Steward explained that he had made a motion to approve the change of zone with an agreement regarding the signage. He was trying to find a solution for the particular circumstance because he believes what is being proposed gets rid of a pole sign and is an improvement. He believes the proposal is a relatively aesthetically pleasing signing solution without establishing a precedence of spot zoning for a particular circumstance. He believes that spot zoning sets a worse precedent than making a contract with the owner to limit what they can and cannot do. Steward acknowledged that he does not believe contract

zoning is a necessarily good solution, and spot zoning has also happened, but this doesn't seem to be the rational zone structure solution.

Bills asked for clarification of the staff recommendation versus the motion previously offered by Steward. Tom Cajka of Planning staff clarified that the staff recommendation keeps the ground sign 30' back from the property line abutting South 27th St. Approval of the change of zone does not require that they install a ground sign. B-1 allows a ground or pole sign.

Bills stated that she has talked with the neighborhood association and they are fine with this as long as the monument sign is there and the pole sign comes down.

Ray Hill of Planning staff suggested that if the neighborhood group wants to enter into a private covenant with the landowner, then the neighborhood would be responsible to enforce the covenants and that could happen with this change of zone. A private covenant could be entered into between the neighborhood association and the property owner and it would be filed with the Register of Deeds. Once that is accomplished, the change of zone could be approved. The City would not be the enforcing agency. It would be between the landowner and the neighborhood association.

Carlson does not believe passing a motion with specific requirements does anything. The only record would be the minutes and there would be no way to enforce that. Only the minutes would show that that was even the intention. Even though we are trying to accommodate a sign, the issue in front of us is about zoning. Regardless of the merits of the ground sign versus the pole sign, Carlson believes that the mechanism we are trying to use is very, very poor. The Commission is here to judge things in light of the Comprehensive Plan, and the Comprehensive Plan does not call for contract or spot zoning. He does not believe it is in conformance with the plan and he believes it is poor policy and a large step to try to accommodate this proposal. He will vote against the motion.

Taylor commented that this is very difficult. As much as he is in favor of some forms of commercial signage, in this instance he finds it very difficult to support passing this zoning for this particular type of signage.

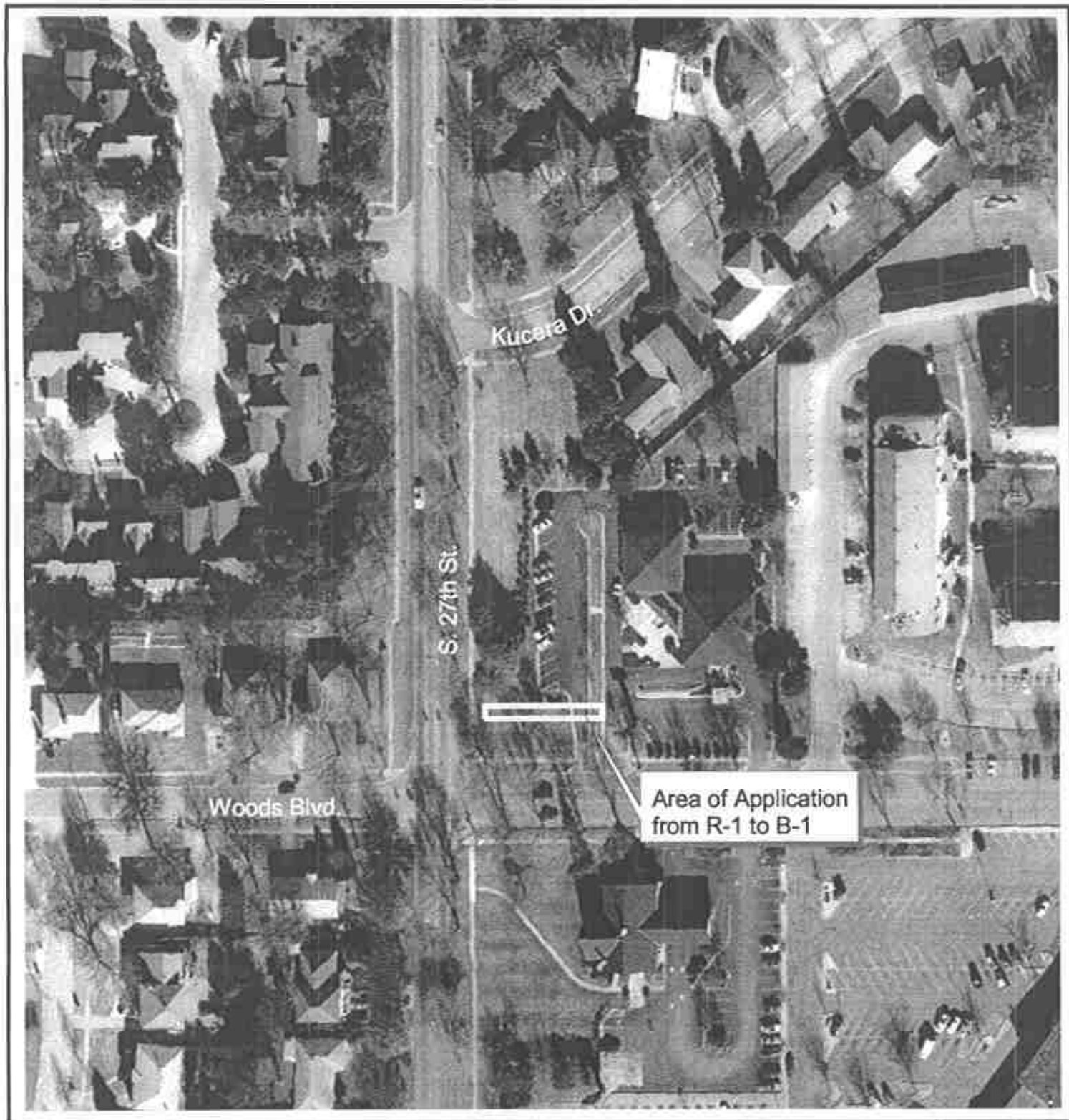
With regard to Bills' comment that the neighborhood association is in favor of this change of zone, Kathleen Sellman, Director of Planning, pointed out that the official record consists of a letter "in opposition" from the Country Club Neighborhood Association. There is nothing in the official record indicating that their position has changed.

Steward stated that he cannot support the motion as stated because he thinks that it sets the precedence for "slicing and dicing" the zoning characteristic to fit the particular situation. He does not believe that is what zoning laws and principles were set out to do. However, he does believe there should be a way to accommodate something that is an improvement over what exists, especially when both the community around it as well as civic judgment indicate that it is an improvement over the present situation. He is searching for a way to accommodate this improvement. He does not believe what is before the Commission is simply a zoning issue. He thinks it is a community improvement issue and this motion is not the way to accomplish that.

Schwinn agreed with Steward. The neighborhood association is probably against what was brought forward in form, and we have no guarantee that what is promised is what will be done. By the very nature of the way banks buy and sell each other, there is no guarantee that the next owner of this property will abide. However, Schwinn does agree that we need to find a way to accommodate situations like this. What is proposed by US Bank at this site would be far better than what is there and what we would like to see in the future in terms of signage. He will probably vote to deny in order to move this on to the City Council in hopes that they can figure something out to make it work.

Motion for approval of staff recommendation failed 2-6: Duvall and Krieser voting 'yes'; Newman, Bills, Taylor, Steward, Carlson and Schwinn voting 'no'; Hunter absent.

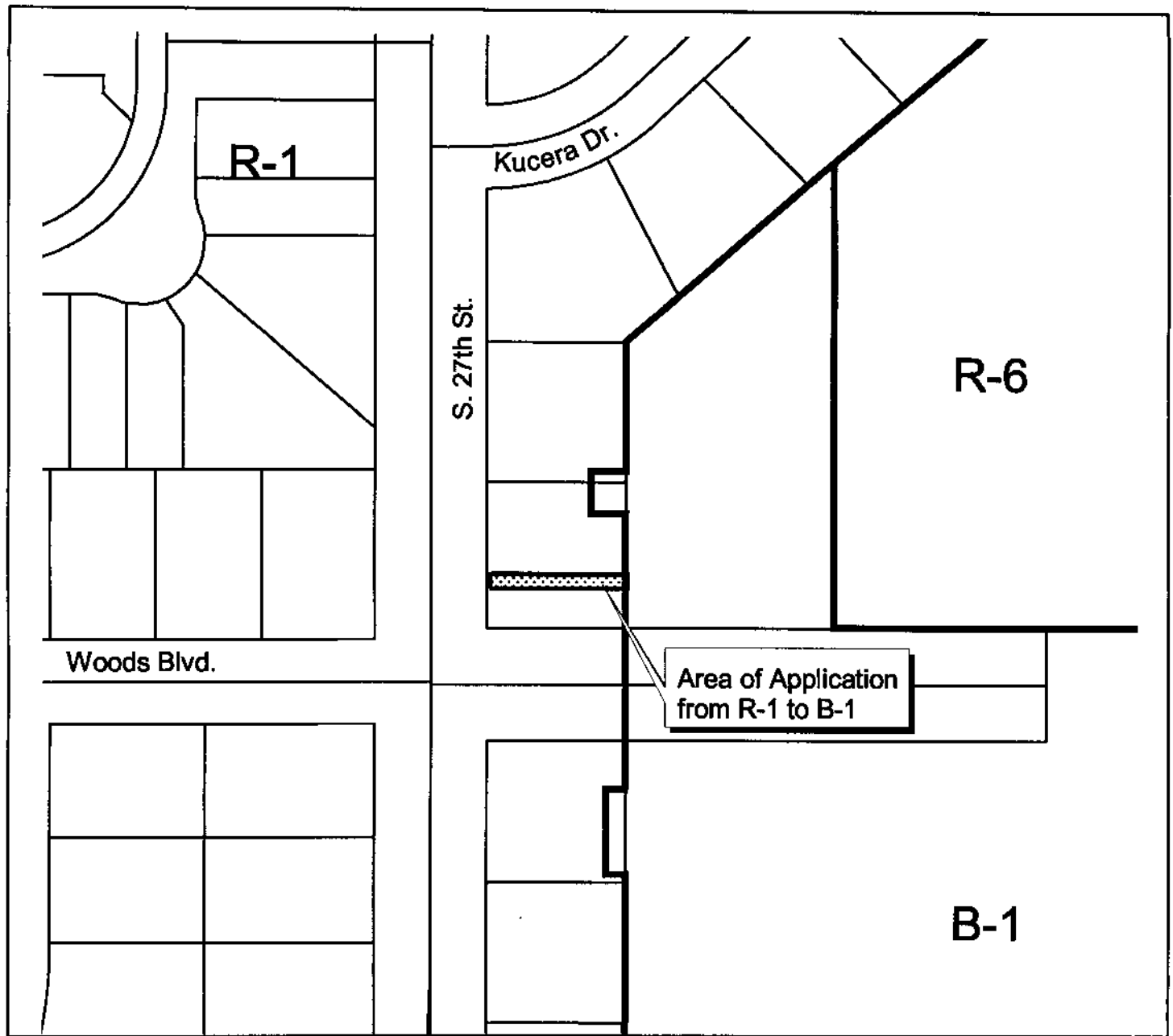
Motion #2. Carlson moved denial, seconded by Newman and carried 6-2: Newman, Bills, Taylor, Steward, Carlson and Schwinn voting 'yes'; Duvall and Krieser voting 'no'; Hunter absent.



**Change of Zone #3340
So. 27th & Woods Blvd.**



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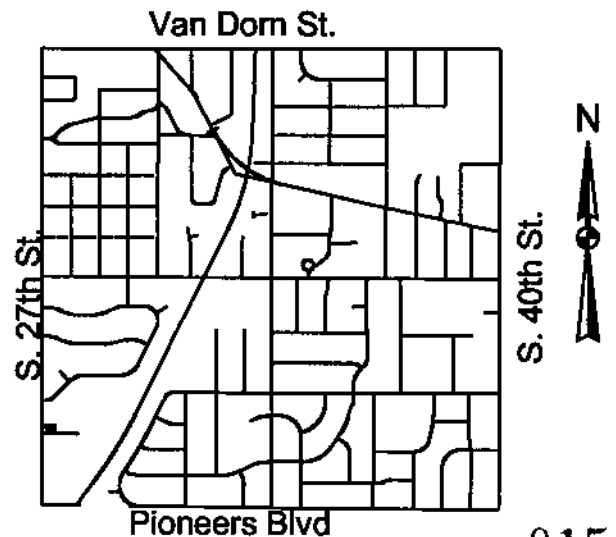
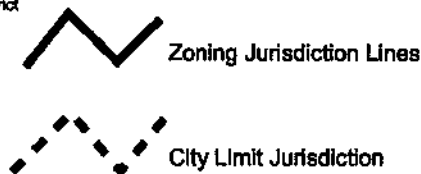
Change of Zone #3340 So. 27th & Woods Blvd.

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

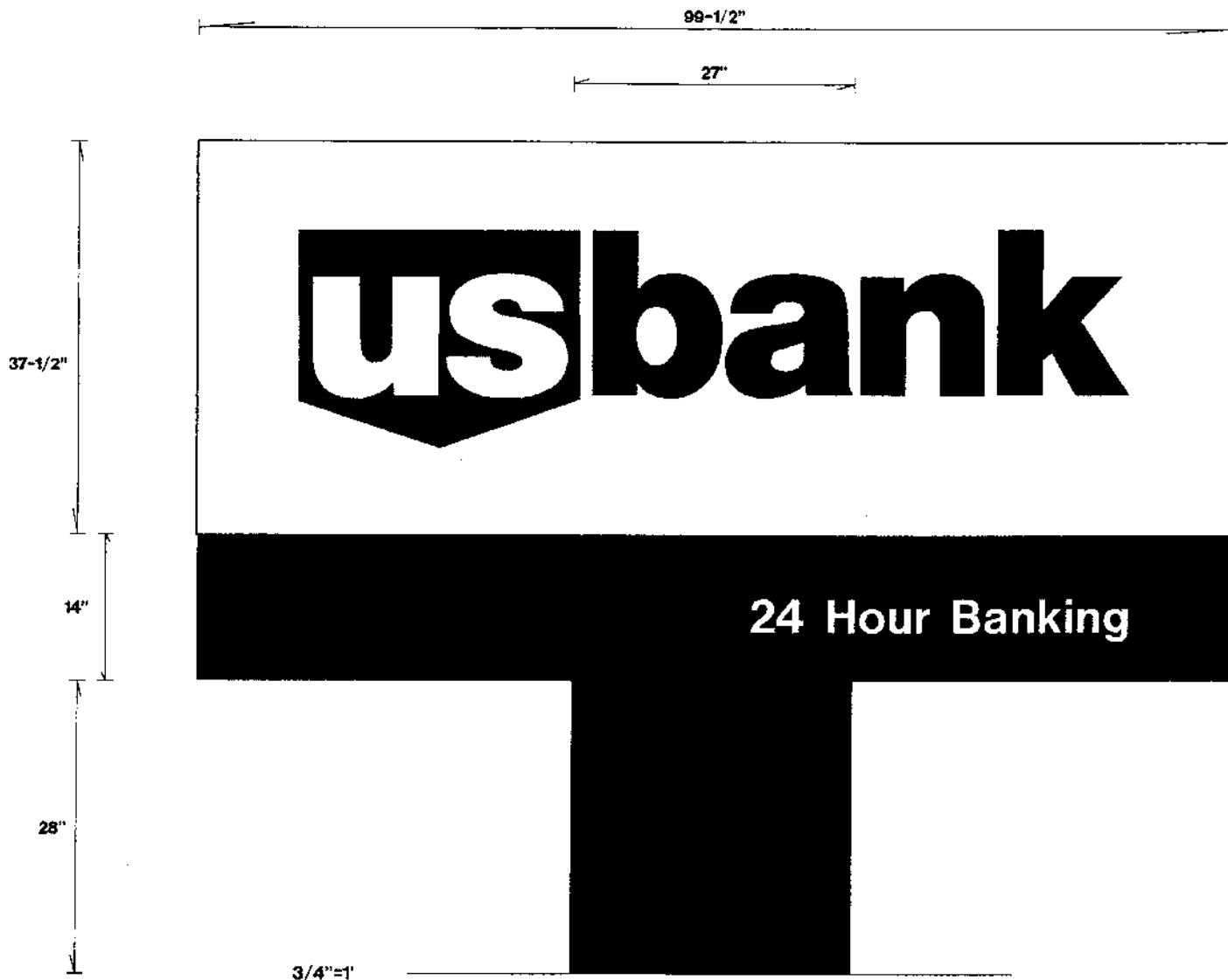
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One Square Mile
Sec. 6 T9N R7E



Date: 9-17-01
Lincoln City - Lancaster County Planning Dept.

CK, # 18608



NEW - DOUBLE FACED - INTERIOR ILLUMINATED - GROUND SIGN

016

NOTE: COMPUTER GENERATED DRAWING IS INTENDED TO BE AN APPROXIMATE REPRESENTATION OF ACTUAL COLORS AND IMAGES

CLIENT	US BANK	SALESPERSON	THOMPSON	HARDCOPY	X
ADDRESS	BISHOP HEIGHTS	ARTIST	ENGLAND	SITE PLAN	
CITY	LINCOLN	SKETCH NO.	02616	PHOTO	
STATE	NEBRASKA	SCALE	NOTED	CLIENT APPROVAL	
		DATE	03/07/01	DATE	

The proposed advertising display has been created from a survey and analysis by our qualified representatives and designers. It is an original drawing created by Nebraska Sign Company. All parties are advised that this drawing is the exclusive property of Nebraska Sign Company and that any use of the same without written permission is strictly prohibited.

COMPUTER FILE (US BANK BISHOP HTS) Lin

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P.C.

PIERSON, FITCHETT, HUNZEKER, BLAKE & KATT
Law Firm

Gary L. Aksamit
Thomas J. Fitchett
Mark A. Hunzeker
William G. Blake
Peter W. Katt
William C. Nelson
David P. Thompson
Patrick D. Timmer
Michael T. Johnson

1045 Lincoln Mall, Suite 200
P.O. Box 95109
Lincoln, Nebraska 68509

Fax (402) 476-7465
Telephone (402) 476-7621

September 14, 2001

VIA FACSIMILE 441 6377

Mike DeKalb
Planning Dept.
555 S. 10th Street
Lincoln, NE 68508

Re: US Bank change of zone
27th & Woods Blvd.

Dear Mike:

As we have discussed, the US Bank branch location at 27th and Woods Boulevard is virtually invisible from 27th Street. The building is quite low-profile, and is located on a heavily landscaped lot. The mature trees, topography, and other buildings combine to make it nearly impossible to identify the bank from 27th Street until you are already past the point of making a safe turn on to Woods Boulevard.

The proposed change of zone is, as you suggested, modeled after the change we made at Plaza Mall South. It is intended to be small enough in scope to prevent construction of anything other than a small sign, yet located in such a way as to allow the bank adequate identification. The proposed sign is an internally lit enclosure. We will attempt to get you a photo demonstrating what the sign will look like as soon as possible.

If you have any further questions, feel free to call.

Sincerely,



Mark A. Hunzeker
For the Firm

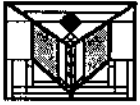
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(G:\WPData\WIRUS Bank - DeKalb 9-14 1yr.wpd)

M e m o r a n d u m

To: Tom Cajka, Planning Department
From: Charles W. Baker, Public Works and Utilities *CBH*
Subject: Change of Zone # 3340
Date: September 18, 2001
cc: Roger Figard
Nicole Fleck-Tooze

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the request for the Change of Zone from R-1 to B-1 for the north 10' of the south 38' of the east 97' of Lot 38, Block 1, Bishop Heights, generally located on the northeast corner of South 27th Street and Woods Boulevard. Public Works has no objection to the proposed change of zone. However, a site plan has not been reviewed regarding any changes that will necessitate this request.

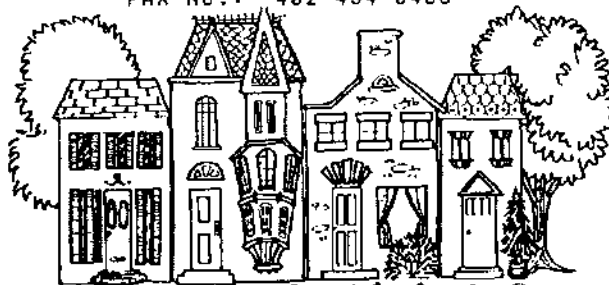


Rodger P Harris

09/17/2001 10:03
AM

To: Thomas J Cajka/Notes@Notes
cc: Chuck A Zimmerman/Notes@Notes
Subject: **CZ 3340, R-1 to B-1.**

We have no comments to offer regarding this CZ.

IN OPPOSITION

ITEM NO. 3.1: CHANGE OF
ZONE NO. 3340
(P.111 - Public Hearing -
10/03/01)

10/1/2001

Country Club Neighborhood Association

THE LINCOLN CITY/LANCASTER COUNTY
PLANNING COMMISSION
555 SOUTH 10TH STREET
LINCOLN NE 68508

Regarding: Change of Zone Request #3340 for US Bank

Dear Commissioners:

The County Club Neighborhood Association reviewed the request for the change of zone captioned above. The Board of Directors of CCNA directed me to voice our strong opposition to this change of zone. Our association has consistently opposed changes in the R-1 zoned areas when the proposed change is for commercial reasons. The 27th Street entry to our association area has consistently been a concern; the encroachment of signs on the 27th Street right of way usually detracts from the otherwise residential nature of the area.

Although it is not our place to offer suggestions, many of our board members offered ideas as to how the business might make the present signs more visible which may accomplish the same ends as US Bank desires. One suggestion was to attach a sign to the side of the building, another offered that the present sign could be lowered to be better viewed under the canopy of the trees.

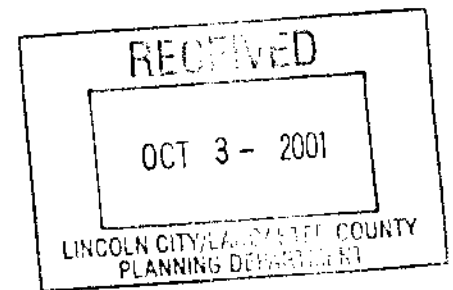
We wish our business neighbor, US Bank, great success, but respectfully ask them to reconsider their plans. We also respectfully oppose the planning staff's recommendation to approve to a reduced area.

Sincerely

James Pattavina
for the Board of Directors

IN OPPOSITION

ITEM NO. 3.1: CHANGE OF ZONE NO. 3340
(p.111 - Public Hearing - 10/03/01)



October 3, 2001

City-County Planning Commission
555 South 10th Street
Lincoln, Nebraska 68508
FAX: 441-6377

Re: Change of Zone No. 3340 - R-1 to B-1
(South 27th and Woods Boulevard)

Dear Members of the City-County Planning Commission:

I am unable to attend the October 3, 2001 Public Hearing on the Change of Zone No. 3340; therefore, I wish to submit in writing my strong opposition to any change OR compromise of the existing R-1 zoning.

I have reached my position of opposition after personally visiting USbank at 27th and Woods Boulevard, visiting with the bank's manager, reviewing the documents at the Planning Department with Mr. Tom Cajka and visiting with Mr. Mark Hunzeker. The following can be concluded:

1. The reason for the application for request of zoning change as stated in Mr. Hunzeker's letter dated September 14, 2001 to Mr. Mike DeKalb of the Planning Department indicates that the bank is "virtually invisible" from 27th Street due to the landscaping and the bank needs to be "identified". The existing pole sign is visible from South 27th Street as I drove my car in all directions and was able to see the sign, thus the "identity" of the bank.
2. In visiting with the bank's branch manager about the change of zoning and the sign on September 28th, she said the following:
 - a. She was not aware of a change of zoning or had seen a sign (we were told that it would be in the lobby of the bank for us to see).
 - b. She said that a lot of people did not know the bank was there and that she had requested a sign for the building, just like the one on the Wells Fargo building directly to the south (in addition to the sign on the west side of the Wells Fargo building, they also have a pole sign just like USbank - their only identifying signs).
 - c. The branch manager did not request a yard sign; she was letting the attorneys, etc. handle the matter.
3. The change made at Plaza Mall South, 40th and South Street, was a supporting argument for the sign and the change in zoning made by Mr. Hunzeker in his September 14th letter. This argument is invalid for the following reasons:
 - a. 40th and South is a high commercial area with buildings and parking lots literally on the street. There was no R-1 residential zoning in place at this location. There was a very narrow green strip between the parking lot and the sidewalk in the area zoned R-2, about one-tenth of the green area at 27th and Woods Boulevard. This area is not considered a transitional area into a residential neighborhood and should not be used as a supportive argument for Change of Zone No. 3340.

- b. 27th and Woods Boulevard is considered a transitional area into an established residential neighborhood – see page 2 of Staff Report.
 - c. Unlike Plaza Mall South, the 27th and Woods Boulevard area was designed and zoned specifically R-1 so the shopping centers would be "... compatible with but not intrusive upon residential neighborhoods."
4. Mr. Tom Cajka of the Planning Department was very helpful when I requested information on this change of zoning request. I told him that I was surprised that the Planning Department would consider this sign after all the controversy and discussion the City has had over signs the past two years. He replied that he was not very aware of this, as he was fairly new to the Planning Department.
- a. I understand that there are many new people in the Planning Department who do not have a sense of history regarding these matters.
 - b. Maintaining zoning integrity and neighborhood integrity has been paramount in Lincoln. It should remain this way.
5. Allowing USbank to have a change of zone to erect an illuminated sign opens the doors for Wells Fargo, Arby's and other businesses/commercial establishments in Lincoln to use the same method for adding signs.
- a. Just as Mr. Hunzeker is using Plaza Mall South as a supporting argument for USbank's request, Wells Fargo, Arby's and others will use USbank as their supporting argument for a change of zoning if USbank is successful.
 - b. In the 1960's and 1970's Lincoln did a lot of "spot" zoning that allowed "slip-ins". We all know the results. In a way, this could be considered "spot zoning", only it is just a sliver of ground that initially one would think would be acceptable. Just as "spot zoning" is not acceptable, neither is "sliver zoning".
6. In reviewing the Lincoln Municipal Code regarding allowable permitted signs in this proposed "sliver zoning" (Chapter 27.69 and Chapter 22.05), one could have an illuminated scrolling message board or any other sign allowed in the R-1 zoning district, not just what is pictured in the applicant's request.
7. In visiting with Mr. Hunzeker on September 28th, he indicated that USbank already had the sign and thought that the 27th and Woods Boulevard branch would be a good place to put it to use. Just because you have an extra sign does not mean that you change the rules just to use this extra sign.

USbank, 27th and Woods Boulevard, wants more identity from the street. Their neighbor, Wells Fargo, accomplished this by having a wall sign on their building. USbank at 40th and South Street accomplished this by having several wall signs on their building. USbank at 27th and Woods Boulevard should do the same thing.

There are no justifiable reasons to grant the request of Change of Zone No. 3340. There are many, many reasons for denial.

Sincerely,



Linda Wibbels
2740 Royal Court
Lincoln, Nebraska 68502